MONTANA LEGISLATIVE HISTORY

Chapter 470 19 77

Bill H _____ S B 333 Original bill & history ✓ C

H. Committee on J. Sub Montana Water

Hearing Date(s) 3/15 ___C
3/21 ___C
_____ ___C
_____ ___C

Date Out _____ ___C

S. Committee on Ag, Liv & Irr

Hearing Date(s) 2/9 ___C
2/11 ___C
_____ ___C
_____ ___C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

Senate BILL NO. 333

INTRODUCED BY Robert McBallen Dayna Lockam

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 89-880, R.C.M. 1947, TO PERMIT THE CONSTRUCTION OF STOCK DAMS OF LESS THAN 15 ACRE-FEET WITHOUT FIRST SECURING A WATER APPROPRIATION PERMIT; REQUIRING NOTICE OF COMPLETION WITHIN 60 DAYS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 89-880, R.C.M. 1947, is amended to read as follows:

"89-880. Right to appropriate -- application for permit. (1) After July 1, 1973, a person may not appropriate water except as provided in this act. A person may only appropriate water for a beneficial use. A right to appropriate water may not be acquired by any other method, including by adverse use, adverse possession, prescription or estoppel; the method prescribed by this act is exclusive.

(2) Except as otherwise provided in subsection (5) of this section, a person may not appropriate water or commence construction of diversion, impoundment, withdrawal, or distribution works therefor except by applying for and receiving a permit from the department. The application shall be made on a form prescribed by the department. The department shall make the forms available through its offices and the offices of the county clerks and recorders. The department shall return a defective application for correction or completion together with the reasons for returning it. An application does not lose priority of filing because of defects, if the application is corrected, completed and refiled with the department within thirty (30) days after its return to the applicant, or within a further time as the department may allow.

(3) The department may cease action upon an application for a permit and return it to the applicant when it finds that the application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use. An application returned for any of these reasons shall be accompanied by a statement of the reasons for which it was returned, and there shall be no right to a priority date based upon the filing of the application. Returning an application pursuant to this subsection shall be deemed a final decision of the department.

(4) A permit issued prior to a final determination of existing rights is provisional and is subject to that final determination. The amount of the appropriation granted in a provisional permit shall be reduced or modified where necessary to protect and guarantee existing rights determined in the final decree. A person may not obtain any

vested right, to an appropriation obtained under a provisional permit, by virtue of construction of diversion works, purchase of equipment to apply water, planting of crops, or other action, where the permit would have been denied or modified if the final decree had been available to the department.

(5) [a] Outside the boundaries of a controlled groundwater area, a permit is not required before appropriating groundwater by means of a well with a maximum yield of less than one hundred (100) gallons a minute.

[b] A permit is not required before appropriating water for use of stock by means of a dam with a maximum capacity of less than 15 acre-feet.

[c] Within sixty (60) days of completion of the well or the dam, or both, the appropriator shall file notice of completion on a form provided by the department at its offices and at the offices of the county clerks and recorders. Upon receipt of the notice, the department shall automatically issue a certificate of water right. The original of the certificate shall be sent to the county clerk and recorder, in the county where the point of diversion or place of use is located, for recordation. The department shall keep a copy of the certificate in its office in Helena. After recordation, the clerk and recorder shall send the certificate to the appropriator. The date of

filing of the notice of completion is the date of priority of the right.

(6) A person who desires to convert a nonproductive oil or gas well to a water well may do so immediately, but shall file a notice of completion or apply for a permit, depending on the maximum yield of the well, as otherwise provided in this act. The date of appropriation shall be the date of filing the notice of completion or the application for a permit.

(7) A person may also appropriate water, without applying for or prior to receiving a permit, under rules adopted by the board under section 89-869 of this act."

-End-

FORTY-FIFTH LEGISLATIVE SESSION

COMMITTEE ON AGRICULTURE, LIVESTOCK & IRRIGATION

SENATE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
SB 165	1-19-77	1/24/26	1/26			1/26			
SB 189	1-21-77	1/26	1/26	1/26					
SB 194	1-21-77	1/28	1/28	1/28					
SB 197	1-21-77	2/4/11	2/11			2/11			
SB 209	1-22-77	1/28	1/28			1/28			
SB 216	1-22-77	1/28/31	1/31	1/31					
SB 239	1-22-77	1/31	1/31			1/31			
SB 259	2-7-77	2/18	2/18		2/18				
SB 261	1-22-77	1/31	1/31	1/31					
SB 263	2-8-77	2/25	2/25	TABLED					
SB 315	1-31-77	2/4/9	2/9			2/9			
SB 316	1-31-77	2/4	2/4	2/4					
SB 333	1-31-77	2/9/11	2/11			2/11			
SB 359	2-1-77	2/9/11/16	2/18			2/18			
SB 373	2-2-77	2/9	2/9			2/9			
SB 376	2-4-77	2/9/16	2/16			2/16			

(Use Separate Sheet for Senate, House Bills, and Resolutions)

MINUTES OF THE MEETING
AGRICULTURE, LIVESTOCK & IRRIGATION
MONTANA STATE SENATE

February 9, 1977

The fourteenth meeting of the Agriculture, Livestock and Irrigation Committee was called to order on the above date in Room 415 of the State Capitol Building by Chairman Graham at 9:30 a.m.

ROLL CALL: All members were present.

Senator Jean Turnage	sponsor
Wendall Deadmond	Legislative Audit
Ralph Parker	Montana Dairymen
K.M. Kelly	Milk Control Division
Dr. Jim Gloser	Dept. of Livestock
Ray Lybeck	Mont. Dairymen's Assoc.
Ralph Kloser	Consolidated Dairies
Ed McHugh	Clover Leaf Dairy
Anthony Ward	Beatrice Foods
Senator Mark Etchart	sponsor
Mons Teigen	Mont. Stockgrowers
Mr. Eddleman	rancher
Jack Nichels, Jr.	rancher
Gene Spilde	MNDA
John Holenback	
Don Tampke	
Jack Perkins	
Jim Peterson	
Mr. Gains	
Mr. Hanson	
Mr. Mason	
Tom Beck	
Orrin Ferris	Dept. of Natural Resources
Slathorn	Conservation District
Senator Bill Lowe	sponsor
Gordon McGowan	Mont. Railroad Assoc.
Jim Mockler	Mont. Coal Council
Steve Brown	Health Department
Jim Posewitz	Mont. Fish & Game

CONSIDERATION OF SENATE BILL 373: Senator Turnage was the chief sponsor of the bill. He said he had introduced this bill at the request of the producers interested in milk production in the state. He had a proposed amend to the title, line 6, following "milk" strike: "and quality of milk" and on line 15, strike the sentence ending on line 18. This amendment would remove testing on store shelves. The content of butterfat in the milk regulates the price.

Senator Kolstad moved the suggested amendment on line 15 be not concurred in. Seconded by Senator Boylan. Motion carried.

DISPOSITION OF SENATE BILL 373: Senator Manley moved that Senate Bill 373 DO PASS AS AMENDED. Second by Senator Kolstad. Motion carried.

CONSIDERATION OF SENATE BILL 333: Senator Etchart, district 2, was the sponsor of this bill. He said this bill was drawn up because it has been very difficult to build reservoirs on ranches. One problem is the time to get the permit. This bill would allow a person who wants to build a reservoir up to 15 acre/feet without obtaining a permit. If the present law had been in affect for the past 25 years, many of these stock water dams would not have been built.

Mr. Eddleman, said he supported this bill. To fill these reservoirs the water is impounded from spring run-off. Since the Montana Water Use Act went into effect there has been only about 800 permits granted, and before it there were some 2,000 being build. He felt it improved the state as a whole.

Mons Teigen, said they are in support of Senate Bill 333. He thought the idea of impounding the water as far up stream as possible is good. In the past few years the number of dams being build has reduced substantially.

Jack Nickels, said on their ranch the ACS would put on so much matching money with the owner to help build these reservoirs. He felt it was expensive for the dirt contractor to have to make several trips to a ranch while they had other work done and were waiting on a permit before he could build the reservoir. He felt the time period on waiting for permits was too long.

The following witnesses arose in support of the bill. Mr. Gene Spilde, John Holenback, Don Tampke, Jack Perkins, Jim Peterson, Mr. Gains, Mr. Radley, Mr. Mason, Mr. Hanson and Tom Beck.

Senator Graham then called for opponents.

Orrin Ferris, Department of Natural Resources, said they were opposed for several reasons. He stated the department had speeded the process of permits up, and they have set up field offices and this has improved their ability to get around. He said it takes about 2 to 3 months to get a permit out. He felt most people are getting used to the fact that they have to acquire a permit ahead of time. He agreed that the number of permits had gone down, but felt other things could be contributing to this. He said a stock dam of 15 acre/feet cover about 2 1/2 acres. He felt if there was to be a limit it should not be based on size.

General discussion was held by the committee. It was the feeling of some of the committee that it should be put into the

bill that these dams not be built on a live stream.

It was decided to hold this bill until the next meeting when amendments could be worked out.

CONSIDERATION OF SENATE BILL 359: Senator Lowe, was sponsor of the bill. He said this bill was an attempt to reserve Montana water for Montana. He said the three year moratorium that was set up is up this year and now there is a move to have another moratorium put on, and that many people were against this. He said this bill was probably not the answer to all problems, but was trying to clear up some of the problems that we currently have. He then went through the sections of the bill. He had proposed amendments to the bill. See exhibit #1.

Senator Galt moved the proposed amendments. Seconded by Senator Dover. Motion carried.

Gordan McGowan, said this bill would establish some forms of priorities which would help Montana protect its water.

Jim Mockler, has some serious reservations about the intent of the bill. He said any water right in an industrial area must be protected for the life of that plant. This would be a non-transferrable right, so that in 40 years it would come back to the state for whatever used they see fit.

M.E. Eddleman, said that until we can get these priorities established we cannot go any where.

Steve Brown, department of health, said they are charged with the responsibility of preserving the water if the state for all users. He said if we start taking water out of the streams and the number of pollutants remain the same we will have a big problem and everyone will end up paying.

Orrin Ferris, said they are not opposed to a preference system, but feel that there are some problems with this proposed bill. He stated that there is a House Joint Resolution being sponsored for the committee on priorities to study the priorities over the next two years and report back. He said other states have a preference system, but that all apply to all rights not just the ones mentioned in this bill. He also felt the list of priorities should include water quality or hydro power. He felt the administering of such a law would be difficult. He mentioned that the moratorium extension had passed the House..

Jim Posewitz, from the Fish and Game gave written testimony, See exhibit #2, attached.

Senator Lowe in closing said this is not an industry bill. It was decided to hold this bill until the next meeting as Senator Lower had another proposed amendment to be drawn up.

The meeting was then adjourned.

7

ROLL CALL

AGRICULTURE, LIVESTOCK & IRRIGATION COMMITTEE

45th LEGISLATIVE SESSION - - 1976 Date 2-9

NAME	PRESENT	ABSENT	EXCUSED
SENATOR GALT - V. Chairman	✓		
SENATOR ABER	✓		
SENATOR BERGREN	✓		
SENATOR BOYLAN	✓		
SENATOR DOVER	✓		
SENATOR HAGER	✓		
SENATOR JERGESON	✓		
SENATOR KOLSTAD	✓		
SENATOR MANLEY	✓		
SENATOR GRAHAM - CHAIRMAN	✓		

Each day attach to minutes

SENATE Agriculture COMMITTEE

BILL 333, 359, 373 VISITORS' REGISTER DATE 1-9

NAME	REPRESENTING	BILL #	(check one) SUPPORT	OPP
Jim Porsenity	Mont. Fish & Game	S 359		✓
[illegible]	MDA / ADA	S 373	✓	
Orrin Ferris	MT DNRC	S 333 S 359		✓
Ted J. Doney	DNR&C	S 333 S 359		✓
Laurence Siroky	DNR&C	S 333 S 359		✓
Lloyd Allenreath	Northern Plains Resource Council	S 333 S 359		
Frank Jones	Jones Livestock Co.	-		
Ed McHugh	Clover Leaf Dairy - Helena	373		
Ralph Klein	CONSOLIDATED DAIRIES	373		✓
Cathy R. Ward	Beatrice Foods - Great Falls	373		
Terry Murphy	Senator (Co-sponsor)	373	✓	
Hoyt Parker	Mont Farmers Union	373	✓	
Robert Lee	Mont Dairymens Ass.	373	✓	
James W. Olsen	Mt. Dept of Livestock	373	✓	
Tim Kelly	Milk Control Div.	373	✓	
Myrna Johnson	Dept. Health + Env. Sciences	359		
George E. Schultz	Mont Dairymens Assn	373	✓	
Ray Lybeck	Mont Dairymens Assn	373	✓	
GENE SPILDE	M.W.U.A., D.U.A., E.B.C., P.A.	359 373	✓	
Jack W. Nikels Jr	Rancher	333	✓	
Janice Rosen	Environmental Information Center	359		✓
[illegible]	Mt. Assn. of Conservation Districts	359	✓	
Senator Marie Eckhardt	District 2	333	✓	
Lee Mickler	MT Coal Council	359	✓	

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

MINUTES OF THE MEETING
AGRICULTURE, LIVESTOCK & IRRIGATION
MONTANA STATE SENATE

February 11, 1977

The fifteenth meeting of the Agriculture, Livestock and Irrigation Committee was called to order on the above date in Room 415 of the State Capitol Building by Chairman Graham at 9:30 a.m.

ROLL CALL: All members were present with the exception of Senator Hager who had been excused.

Representative Ray Jensen	sponsor
K.M. Kelly	Board of Milk Control
Vernon Westlake	Lower Middle creek
Gordon Darlington	Agriculture Preservation Asso
Mons Teigen	Mont. Stockgrowers
Gene Spilde	MWDA
Joe Alberda	Kughen Ditch Co.
Bill Asher	Agriculture Pres. Assn.
Mr. & Mrs. Eldon Ackerman	self
Willis Daniel	West Gallatin Canal
William DeRham	Gallatin Gateway
Henry Visser	High Line Canal Co.
Jeff Dorsey	Flying D. Ranch
Albert Bolhier	Kughen Ditch Co.
Ron White	self
Hugh Brookie	self
Harry Brainard	self
W. A. Black	self
R. A. Ellis	self
Jack Nash	A.P.A.
R. P. Meyers	A.P.A.
Orrin Ferris	Mont. Dept. of Natural Res.
Lawrence Siroky	" " " "
Senator William Lowe	sponsor

DISPOSITION OF SENATE BILL 333: The department of Natural Resources submitted amendments to the bill. Senator Dover moved the proposed amenments. Second by Senator Kolstad. Motion carried. Senator Boylan absent.

Senator Manley moved that Senate Bill 333 DO PASS AS AMENDED. Seconded by Senator Dover. Motion carried. Senator Boylan absent.

DISPOSITION OF SENATE BILL 197: Senator Jergeson said the proposed amendments still do not cover his concern. He said if there were 6 candidates running a person could win without the majority of the votes. He felt there should be a run-off election between the top to vote getters.

ROLL CALL

AGRICULTURE, LIVESTOCK & IRRIGATION COMMITTEE

45th LEGISLATIVE SESSION - - 1976 Date 2-11-7

NAME	PRESENT	ABSENT	EXCUSED
SENATOR GALT - V. Chairman	✓		
SENATOR ABER	✓		
SENATOR BERGREN	✓		
SENATOR BOYLAN	✓		
SENATOR DOVER	✓		
SENATOR HAGER			✓
SENATOR JERGESON	✓		
SENATOR KOLSTAD	✓		
SENATOR MANLEY	✓		
SENATOR GRAHAM - CHAIRMAN	✓		

STANDING COMMITTEE REPORT

February 11 19 77

MR. PRESIDENT

We, your committee on AGRICULTURE, LIVESTOCK AND IRRIGATION

having had under consideration SENATE Bill No. 333

Respectfully report as follows: That SENATE Bill No. 333,
introduced bill, be amended as follows:

1. Amend page 3, section 1, line 12.
Following: "use of"
Strike: "stock"
Insert: "livestock"
Following: "dam"
Insert: "or pit"

2. Amend page 3, section 1, line 13.
Following: "acre-feet"
Strike: "."
Insert: "if the appropriation is from a source other than a perennial flowing stream. For the purpose of this section, a perennial flowing stream means a stream which historically has flowed continuously at all seasons of the year and during dry as well as wet years."

3. Amend page 3, section 1, line 15.
Following: "dam"
Strike: ", or both,"

DO PASS
AND, AS SO AMENDED, DO PASS

Chairman.

STATE PUB. CO.
Helena, Mont.

WATER SUB-COMMITTEE ON JUDICIARY
March 15, 1977

The meeting of the water sub-committee was called to order by Chairman Willie Day at 9:00 a.m. on Tuesday, March 15 in room 436 of the Capitol Building, Helena, Montana. All members were present except Representatives Dassinger, Halvorson, Kimble, Mular, Nathe, and Ramirez.

Scheduled for hearing were Senate Bills 333 and 376.

SENATE BILL #376:
SENATOR BOYLAN, DISTRICT #38:
I introduced this fairly early in the session. What this bill is trying to do is to speed up the process of getting the adjudicated water recorded. It would amend the present water use act to clarify existing water rights and the transfer of water rights. Since HB 809 we will try to meld this bill into that. I hope the committee is aware of what we are trying to do. I don't see many problems with Representative Scully's bill.

BILL ASHER, AGRICULTURE PRES. ASSOCIATION:
We are in full support of this bill and are in support of the concept of merging with HB 809.

TED DONEY, DEPARTMENT OF NATURAL RESOURCES:
We did oppose this bill in the Senate, but since it was amended I agree we should hold this bill and see what happens to HB 809.

REPRESENTATIVE ROTH:
What part would you like to have incorporated?

SENATOR BOYLAN:
Page 1 and page 5, we wanted a record made of it.

There was no further discussion and the hearing closed on SB 376.

THE HEARING OPENED ON SENATE BILL #333:

SENATOR ETCHART, DISTRICT #2:
This bill would permit the construction of stock dams of less than 15 acre-feet without first securing a water appropriation permit, but would require notice of completion within 60 days. I have introduced this bill to help alleviate a problem, concerning the permit for a stock water dam. It has taken as long as 180 days in some cases to secure the permit. If a rancher or farmer could go ahead in the case of his having the equipment available at a certain time, and go ahead it could save a lot of the cost of moving of the equipment. We heard that a lot of the ranchers are going ahead without getting the permis. This bill allows them to go ahead and get the permit following actual construction of the dam. He discussed an amendment on page 3, lines 14 through 18 that was put in by the Ser and proved helpful.

PROPONENT, TOM HARWOOD, FARM OWNER, SHELBY:
We are on one of the semi-annual streams in the state and have always had problems with the resources board with trying to get these ponds put in.

PROPONENT, GENE SPILDE, BIG TIMBER:
I would like to suggest, we have needed this for a long time. I am in support of the bill.

PROPONENT, R. A. ELLIS, HELENA VALLEY IRRIGATION DISTRICT:
This type of water shed legislation is really great.

OPPONENT, TED DONEY, DEPARTMENT OF NATURAL RESOURCES:
I hate to do this again. It has been amended but we still have problems with it. This legislation will not protect prior rights. We do have examples of little ponds only 1 acre in size that interfere with prior rights. We are requiring a drainage device to let the water out, to protect the prior rights. It now takes only a month or a month and 1/2 to secure a permit. Floyd Bishop from Wyoming is now consulting on water rights, and is available to us. This bill will only put another loophole in the law. I know people don't like to get permits but they are for their own protection.

MR. SAROKE:
We held about 70 or 80 hearings, 973 permits for stock water reservoirs of less than 15 acres. There is really no correlation about the size of the reservoir and whether there will be a hearing on it. He went on to talk about the procedure that amended the water use act. He passed out a chart and explained it. He passed out a copy of the process on the computer, gave a print-out, showing 2300 permits. On the 32 rece permits issued some of the reservoirs required drainage devices. He commented that on some of the reservoirs you might have as high as a 20 foot bank.

SENATOR ETCHART:
The DNR has made, my point is, if they have held only 32 hearings, that might take 180 days, why stop all of the water development over the state just because some might go to court. It seems to me the cases of people being adversly affected would be minimal.

REPRESENTATIVE HAND:
Senator Etchart, what size are you talking about.

SENATOR ETCHART:
Nothing over 15 acre feet.

REPRESENTATIVE DASSINGER:
I think the bill needs some clarification, something to keep from diverting to another watershed, diverting the stream, I mean.

It needs some wording to provide for release or drainage.

SENATOR ETCHART:
He discussed the illegal dams that are already in, and the permits of those dams, the need that might arise for some provision for release of the water, etc.

REPRESENTATIVE CURTISS:
Why not have a provisional permit?

Then followed discussion about this type of permit.

REPRESENTATIVE DAY:
I am concerned about the definition of perennial-flowing streams. 95% of the permits would be on non-perennial flowing streams.

Then followed discussion about collecting run-off, and that these are already existing water rights.

REPRESENTATIVE BENGSTON:
What precipitated this bill?

SENATOR ETCHART:
The farmers and ranchers who have this problem.

There was no further discussion and the hearing closed on SB 333.

REPRESENTATIVE DASSINGER made the comment that the renewable resources of the coal funds is in danger because of using the money for sprinklin irrigation. He stated that they should use some of the money for building an off-stream dam somewhere in the state.

REPRESENTATIVE BENGSTON:
There are three already. She discussed the water committee bill that dealt with this.

After some further discussion the meeting adjourned at 10:15 a.m.

William M. Day, Chairman
Water sub-committee

John P. Scully, Chairman
Judiciary

Mary Ellen Connelly, Secretary

VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

BILL SB 333 Date March 15, 1977

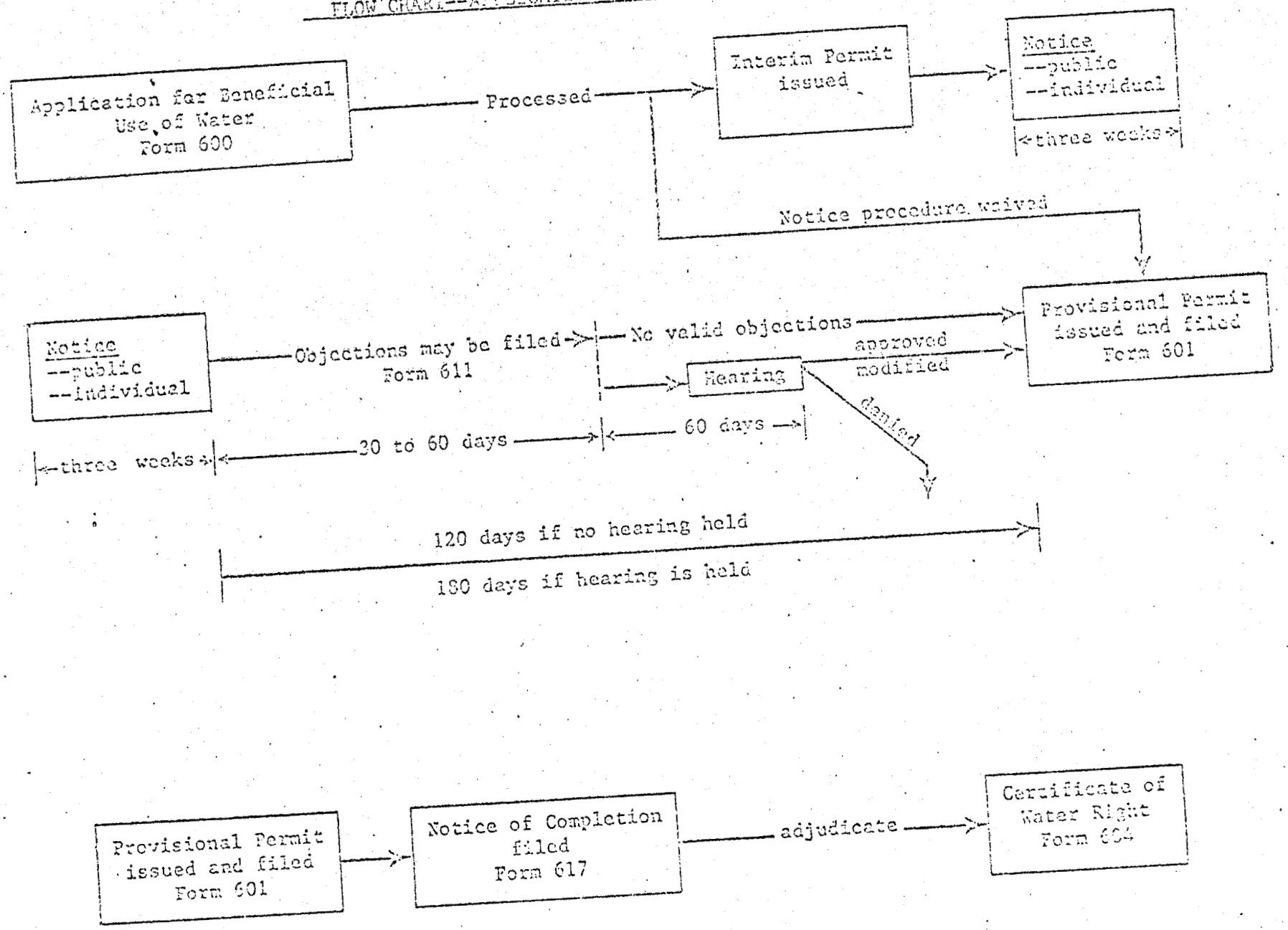
SPONSOR Senator Etchart

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPP
[illegible] Hagwood	Box 66 Galata, Mt, 59444	Farm owner	✓	
R.H. Ellis	Helena Valley	Self	✓	
GENE Spilde	S.E.P.A. Bigotender		✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

FLOW CHART--APPLICATION FOR WATER USE PERMIT



WATER SUB-COMMITTEE ON JUDICIARY

EXECUTIVE SESSION
March 21, 1977

The executive session of the water sub-committee was called to order by Chairman Day at 9:15 a.m. Monday in room 436 of the Capitol Building, Helena, Montana, with a quorum being present. Members absent were Representatives Bengston, Curtiss, Halvorson, Mular, and Dussault.

SENATE BILL #216:
Chairman Day announced that Senator Boylan has stated that this bill is being amended into House Bill #664, which is a committee bill. REPRESENTATIVE LORY moved Senate Bill #216 be tabled. The motion carried with the vote unanimous.

SENATE BILL #333:
REPRESENTATIVE LORY moved "be not concurred in".
REPRESENTATIVE ELLISON moved the bill be amended. Ted Doney presented proposed amendments to the committee which would make it more palatable in his opinion, if the committee feels the bill is necessary. About the permit, he said this would be an after-the-fact permit. He said the reservoir could have a pump and pump the water over the end or another alternative, they could have a by-pass. This would protect the down-stream users with prior permits. Representative Dassinger commented that he would like to make it mandatory, referring to the new sub-section in the proposed amendments. Representative Nathe explained the intent of the bill, as he saw it, and asked if the other members agreed with him. The question was called and the motion to accept the proposed amendments carried with the vote unanimous.

REPRESENTATIVE DASSINGER moved a substitute motion the bill be put into sub-committee for additional amendments. The motion carried with Representatives Lory and Nathe voting "no".

CHAIRMAN DAY appointed Representatives Scully, Roth and Dassinger to the sub-committee with Representative Scully as chairman.

Representative Scully reported to the committee that HB 809 was in trouble in the senate and was probably going to die.

The meeting adjourned at 9:45 a.m.

William M. Day, Chairman
Water sub-committee

John P. Scully, Chairman,
Judiciary

Mary Ellen Connelly, Secretary

Amendments to S.B. 333
DNR&C

Amend the title on page 1, line 5 of the Senate Third Reading copy by inserting the word "WATER" after the word "STOCK"

and further amend on page 1, line 6, by deleting the word "DAMS" and inserting in lieu thereof "IMPOUNDMENTS OR PITS"

and further amend on page 1, line 6, by deleting the number "15" and inserting in lieu thereof "5"

and further amend on page 1, line 7, by deleting the word "APPROPRIATION" and inserting in lieu thereof "USE"

and further amend on page 1, lines 7 and 8 by deleting all the material contained therein after the word "PERMIT" on line 7 and through the word "DAYS" on line 8

and further amend on page 3, lines 11 through 18, by deleting all the material contained therein

and further amend on page 3, line 19, by striking "(c)"

and further amend on page 3, line 20, by striking "or the dam"

and further amend on page 4, after line 7, by inserting the following:

"(b)(i) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if the maximum capacity of the impoundment or pit is less than 5 acre feet and the appropriation is from a source other than a perennial flowing stream. As used in this subsection, a perennial flowing stream means a stream which historically has flowed continuously at all seasons of the year, during dry as well as wet years.

(ii) Within 60 days of completion of the construction of the impoundment or pit, the appropriator shall apply for a permit as prescribed by this act. If the department determines after processing the application that the rights of other appropriators have been or will be adversely affected, it may require the applicant to modify the construction of the impoundment or pit, and issue the permit subject to such terms, conditions, restrictions, or limitations it considers necessary to protect the rights of other appropriators.

(iii) This subsection does not limit the right of any person from applying for a permit before construction of such impoundment or pit."

MONTANA LEGISLATIVE COUN

WATER SUB-COMMITTEE ON JUDICIARY
EXECUTIVE SESSION

March 25, 1977

The Water Sub-committee on Judiciary was called to order for executive session by Chairman Day at 8:00 a.m. in room 436 of the Capitol Building, Helena, Montana on Friday, March 22. All members were present except Representatives Ellison, Kimble and Nathe.

SENATE BILL #216:
Representative Ramirez moved the committee reconsider its action on this bill and take it off the table. Representative Scully made the second and the motion carried with the vote unanimous. Representative Ramirez moved "not concurred in" and the second was made by Representative Roth. The motion carried with the vote unanimous.

SENATE BILL #376:
Representative Dussault moved to table. The motion carried with Representatives Scully and Mular voting "no".

SENATE BILL #333:
Representative Scully presented the proposed amendments and explained them to the committee. He told what they would do and moved the acceptance of the amendments and as so moved "as amended be concurred in". The motion carried with Representatives Mular and Dussault voting "no".

SENATE BILL #359:
Representative Ramirez reported from the sub-committee and went through the proposed amendments and explained them in great detail. Discussion followed. The Fish and Game representatives stated that this bill established a minimum flow. The Tenet method requires streams to be gauged and some of these streams are not gauged so the figures are not completely accurate. A discussion followed about what method to use if the Tenet method was not to be used. No result was reached.

Representative Dassinger moved the committee adopt the proposed amendments. The motion carried with the vote unanimous.

Representative Dassinger moved "be concurred in as amended". The motion carried with the following representatives voting "no", Day, Dussault, Hand, Halvorson and Lory.

Representative Dussault moved another amendment and Representative Ramirez said this would completely change the intent of the bill and he would have to vote against such an amendment. The motion failed with Representatives Day and Dussault voting "yes".

The meeting adjourned at 9:00 a.m.

William M. Day, Chairman

WMD:mec

SENATE BILL NO. 333

INTRODUCED BY ETCHART, McCALLUM, FLYNN, GRAHAM

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 89-880, R.C.M. 1947, TO PERMIT THE CONSTRUCTION OF STOCK ~~DAMS~~ WATER IMPOUNDMENTS OR PITS OF LESS THAN 15 ACRE-FEET WITHOUT FIRST SECURING A WATER ~~APPROPRIATION~~ USE PERMIT~~, REQUIRING NOTICE OF COMPLETION WITHIN 60 DAYS~~."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 89-880, R.C.M. 1947, is amended to read as follows:

"89-880. Right to appropriate -- application for permit. (1) After July 1, 1973, a person may not appropriate water except as provided in this act. A person may only appropriate water for a beneficial use. A right to appropriate water may not be acquired by any other method, including by adverse use, adverse possession, prescription or estoppel; the method prescribed by this act is exclusive.

(2) Except as otherwise provided in subsection (5) of this section, a person may not appropriate water or commence construction of diversion, impoundment, withdrawal, or distribution works therefor except by applying for and receiving a permit from the department. The application shall be made on a form prescribed by the department. The department shall make the forms available through its offices and the offices of the county clerks and recorders. The department shall return a defective application for correction or completion together with the reasons for returning it. An application does not lose priority of filing because of defects, if the application is corrected, completed and refiled with the department within thirty (30) days after its return to the applicant, or within a further time as the department may allow.

(3) The department may cease action upon an application for a permit and return it to the applicant when it finds that the application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use. An application returned for any of these reasons shall be accompanied by a statement of the reasons for which it was returned, and there shall be no right to a priority date based upon the filing of the application. Returning an application pursuant to this subsection shall be deemed a final decision of the department.

(4) A permit issued prior to a final determination of existing rights is provisional and is subject to that final determination. The amount of the appropriation granted in a provisional permit shall be reduced or modified where necessary to protect and guarantee existing rights determined in the final decree. A person may not obtain any

vested right, to an appropriation obtained under a provisional permit, by virtue of construction or diversion works, purchase of equipment to apply water, planting of crops, or other action, where the permit would have been denied or modified if the final decree had been available to the department.

(5) (a) Outside the boundaries of a controlled groundwater area, a permit is not required before appropriating groundwater by means of a well with a maximum yield of less than one hundred (100) gallons a minute.

~~(b) A permit is not required before appropriating water for use of stock LIVESTOCK by means of a dam OR PIT with a maximum capacity of less than 15 acre feet IF THE APPROPRIATION IS FROM A SOURCE OTHER THAN A PERENNIAL FLOWING STREAM. FOR THE PURPOSE OF THIS SECTION, A PERENNIAL FLOWING STREAM MEANS A STREAM WHICH HISTORICALLY HAS FLOWED CONTINUOUSLY AT ALL SEASONS OF THE YEAR AND DURING DRY AS WELL AS WET YEARS.~~

~~(c)~~ Within sixty (60) days of completion of the well ~~or the dam, or both,~~ the appropriator shall file notice of completion on a form provided by the department at its offices and at the offices of the county clerks and recorders. Upon receipt of the notice, the department shall automatically issue a certificate of water right. The original of the certificate shall be sent to the county

clerk and recorder, in the county where the point of diversion or place of use is located, for recordation. The department shall keep a copy of the certificate in its office in Helena. After recordation, the clerk and recorder shall send the certificate to the appropriator. The date of filing of the notice of completion is the date of priority of the right.

(B) A PERMIT IS NOT REQUIRED BEFORE CONSTRUCTING AN IMPOUNDMENT OR PIT AND APPROPRIATING WATER FOR USE BY LIVESTOCK IF THE MAXIMUM CAPACITY OF THE IMPOUNDMENT OR PIT IS LESS THAN 15 ACRE FEET AND THE APPROPRIATION IS FROM A SOURCE OTHER THAN A PERENNIAL FLOWING STREAM. AS USED IN THIS SUBSECTION, A PERENNIAL FLOWING STREAM MEANS A STREAM WHICH HISTORICALLY HAS FLOWED CONTINUOUSLY AT ALL SEASONS OF THE YEAR, DURING DRY AS WELL AS WET YEARS. HOWEVER, BEFORE CONSTRUCTING THE IMPOUNDMENT OR PIT, THE APPROPRIATOR SHALL APPLY FOR A PERMIT AS PRESCRIBED BY THIS ACT. IF THE DEPARTMENT DETERMINES AFTER PROCESSING THE APPLICATION THAT THE RIGHTS OF OTHER APPROPRIATORS HAVE BEEN OR WILL BE ADVERSELY AFFECTED, IT MAY REQUIRE THE APPLICANT TO MODIFY THE CONSTRUCTION OF THE IMPOUNDMENT OR PIT, AND ISSUE THE PERMIT SUBJECT TO SUCH TERMS, CONDITIONS, RESTRICTIONS, OR LIMITATIONS IT CONSIDERS NECESSARY TO PROTECT THE RIGHTS OF OTHER APPROPRIATORS.

(6) A person who desires to convert a nonproductive

oil or gas well to a water well may do so immediately, but shall file a notice of completion or apply for a permit, depending on the maximum yield of the well, as otherwise provided in this act. The date of appropriation shall be the date of filing the notice of completion or the application for a permit.

(7) A person may also appropriate water, without applying for or prior to receiving a permit, under rules adopted by the board under section 89-869 of this act."

-End-